

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5629

PETITION OF ARTHUR T. KOINES

(Hearing held September 5, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, September 28, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioner proposes to construct a second-story addition that requires variances: (1) of three (3) feet as it is within twenty-two (22) feet of the front lot line; and (2) of .50 feet as it is within 6.50 feet of the side lot line. The required setback front lot line setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet.

The subject property is Lot 8, Block V, Greenwich Forest Subdivision, located at 5714 Huntington Parkway, Bethesda, Maryland, in the R-90 Zone (Tax Account No. 497525).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a second-story addition over an existing first story.
2. The petitioner testified that the residence has built in the 1940s and that the northwest section of the house is located in the front and side yard setbacks. See, Exhibit No. 7. The petitioner testified that the addition would be built on the existing footprint and that the design and the materials of the addition would be in harmony with the existing second-story.
3. The petitioner testified that the property is a deep and narrow lot. The petitioner testified that the front of the property slopes upward to 8 feet above the road and that the steep slope of the front yard provides poor access to rear of the lot.
4. The petitioner testified that he has spoken with his neighbors and that his neighbors support the variance request.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's residence is located in the front and side yard setbacks. The proposed addition will be built over an existing first floor and will not expand the existing footprint. The Board finds that these are exceptional circumstances that are unique and peculiar to property. The Board further finds that the strict application of the regulations would result in an undue hardship upon the petitioner were the variances to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a second-story addition are minimum reasonably necessary to overcome the property's unique circumstances.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the design and the materials of the second-story addition would be in harmony with the existing second-story and would not materially change the view from the neighboring homes. The Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties. The record contains no correspondence or testimony in opposition to the variance request.

Accordingly, the requested variances of three (3) from the required twenty-two (22) foot front lot line setback and of .50 feet from the required seven (7) foot side lot line setback for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 through 6(a) through 6(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Mindy Pittell Hurwitz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 28th day of September, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.